

TABLE OF CONTENTS

EXECUTIVE SUMMARY

I.	TRANSFER AND ASSIGNMENT OF LPFM PERMITS AND LICENSES	4
II.	OWNERSHIP AND ELIGIBILITY LIMITATIONS	11
III	TIME SHARING	15
IV	CONSTRUCTION PERIOD	22
V	INTERFERENCE PROTECTION METHODOLOGY	25
VI	THE STATUS OF FM TRANSLATORS TO LPFM STATIONS	33
VII	PROTECTION OF SUBSEQUENTLY AUTHORIZED FM FACILITIES	46
VII	STATUS OF THE LP-10 SERVICE	48
IX	CONCLUSION	50

APPENDIX A - TEXT OF PROPOSED RULES

APPENDIX B - LIST OF "LEGACY" TRANSLATORS ELIGIBLE FOR
REC PROPOSED GRANDFATHERED STATUS

APPENDIX C - LIST OF LPTV CHANNEL 6 STATIONS AND THEIR
PROPOSED LEVEL OF PROTECTION

APPENDIX D - FUTURE LPFM AVAILABILITY IN METRO AREAS BASED
ON REC PROPOSALS AND CONGRESSIONAL ACTION

NATIONWIDE LPFM AVAILABILITY MAP BASED ON REC PROPOSALS
AND CONGRESSIONAL ACTION

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the matter of)
)
) MM Docket 99-25
Creation of a Low Power Radio Service)
)

EXECUTIVE SUMMARY

In response to a Commission Notice of Proposed Rulemaking (NPRM), REC Networks ("REC") files the following comments regarding changes to the Low Power FM ("LPFM") Service by addressing issues raised by the FCC. In our comments, we address the following positions:

- Support changes in over 50% of board members in an assignment application.
- Allowing the transfer of original construction permits on the verge of expiration.
- Support voluntary transfers of LPFM licenses on a non-profit basis.
- Permit an LPFM station to own a limited number of nearby translators.
- New service rules for LPFM stations carried over non-commonly owned translators.
- Changes to how consecutive licenses are handled. Support renewal of these licenses.
- Allow new applicants to "join" a time-share group or apply for unused airtime.
- Support automatic extension of construction permits to 36 months.
- Eliminate IF channel protections to domestic full power and FM translator stations.
- New method for LPFM protection to FM translators and Channel 6 low power TV.
- Identified 3,000 FM translators that should be entitled to protection by LPFM.
- Propose to eliminate protection to "distant" and recently filed FM translators.
- Imposition of second adjacent channel protection to LPFM from translators.
- Place LP-10 on a level playing field with LP-100.

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the matter of)
)
) MM Docket 99-25
Creation of a Low Power Radio Service)
)

COMMENTS OF REC NETWORKS

1. REC Networks ("REC") is a supporter of locally owned and diverse radio. REC currently operates several Internet only radio stations. REC also operates several websites including the original LPFM Channel Search Tool¹. REC Networks also represents the interests of independently owned Low Power FM ("LPFM") broadcast stations and their listeners. REC also follows issues that involve the availability of media in rural and underserved areas.

2. REC has reviewed the *Second Order on Reconsideration and Further Notice of Proposed Rulemaking* ("Notice") and accordingly, files the following comments.

3. Overall, some of the changes the Commission is proposing will allow LPFM stations to be able to address situations that are a reality in the day to day operation of a non-profit organization. Additional changes suggested by the Commission and those that will be proposed by REC in this filing will substantially increase the number of LPFM stations in and near urban areas. More opportunities will arise at a time when the provisions of the Radio Broadcast Protection Act² ("RBPA") are repealed. Any rulemaking that comes out of this notice must be designed to easily be compatible with the possible future removal of third adjacent channel protection by LPFM stations to full power FM and FM Translator stations.

¹ - <http://www.recnet.com/lpfminfo>

² - Making Appropriations for the Government of the District of Columbia for FY 2001 Act ("2001 D.C. Appropriations Act") Pub L. No. 106-553, § 632, 114 Stat. 2762, 2762-A-111 (2000).

I. TRANSFER AND ASSIGNMENT OF LPFM PERMITS & LICENSES

a. Discussion

4. As a high profile organization that is in touch with LPFM licensees and permit holders throughout the United States ("LPFM operators"), REC, like Prometheus and Media Access Project ("MAP") have heard concerns from LPFM operators that it is extremely difficult to transfer control from one elected board to another without violating the rules prohibiting the change of more than 50% of the governing board. Since many of these boards are elected, it is very possible that the results of such board elections would result in over 50% of the members changing after a single election. In some organizations, this is encouraged as it gives more people an opportunity to take on a leadership role with the organization.

5. We have also experienced situations where a failing LPFM station wishes to assign their permit or transfer their license to another organization. We recently were contacted by one organization who wishes to take over the construction permit of another organization's whose LPFM permit is about to lapse and move their facilities to the other channel. The unfortunate reality is that we have seen 221 construction permits lapse³. Some of these permits could have possibly been saved if the permit holder was able to assign another Non-Commercial Educational (NCE) qualified organization who will be able to build the station.

6. However, when we bring up the subject of the assignment of stations and construction permits, especially those that have been un-built ("naked permits"), we run the risk of trafficking of permits for profit and other activity that is contrary to the spirit and intention of the LPFM service that is alleged to be taking place in the FM Translator service⁴. Any changes we make to the rules regarding the assignment and transfer of LPFM stations and permits must include safeguards against permit trafficking and situations such as those experienced in the first LPFM windows where it was alleged that churches were either misled or without their

³ - REC National LPFM Scoreboard <http://www.recnet.com/cdbs/scoreboard.php> as of close of business, March 18, 2005. We also note that there are 51 construction permits that do not have a call sign associated with them and that are expiring in the next 4 months from the date of the data pull.

⁴ - See Emergency Petition for Freeze on Pending FM Translator Applications of Prometheus Radio Project, REC Networks, et al. MB Docket 99-25, AUC-03-83-B (Auction No. 83) at 2.

knowledge, a CP has been applied for under the name of the church by a single individual and then that individual would then attempt to sell the church the equipment necessary to operate the station under the guise of *"getting them a license to build a [LPFM] radio station at no charge to them."*

b. REC Proposals

7. Board Changes. REC supports rule changes⁵ that would permit an LPFM station to change more than 50% of its board members at one time. In this case the entity name must remain the same however allowances should be given in cases where the entity name changes designate an "old board" changing to a "new board". In this case, the actual organization operating the station is the same and therefore their existing educational statement is still valid.

8. Assignments of Construction Permits. Elsewhere in this filing, REC supports the blanket extension of all currently valid construction permits an extra eighteen (18) months. Assuming that automatic extension is made, REC supports rule changes that would require a Construction Permit to not be assignable unless it is set to expire in less than twelve (12) months. The entity that is the proposed assignee must qualify as a NCE entity with no attributable interests in any other broadcast station (full power, low power or translator). An exception is made to an existing LPFM station wishing to take over the failing construction permit. If this exception is invoked, the incoming entity must surrender their current license or otherwise transfer it per the proposed rules prior to commencing program tests on the new facility. The new entity that receives the assigned CP may apply for an additional twelve (12) month tolling period to complete construction of the LPFM station. This assignment opportunity is limited to one time per facility. If the new organization is not able to build in the remaining period of the permit (including the additional 12 month tolling period), then the permit will lapse and can't be assigned again. REC must insist that assignments of naked construction permits such

⁵ See Appendix A for our proposed changes to the rules.

as what is described above must include a statement that the assignment was made with no monetary consideration for the permit⁶.

9. REC feels that this rule change will allow the ability for another organization to be able to come in and "rescue" a failing construction permit. Safeguards such as the two-year waiting period and "one time only" limitation on assignments are placed in the rules to discourage the trafficking of permits and the warehousing of frequencies. REC feels that that the additional one year tolling period added to the organization willing to rescue the permit will increase the chances that the LPFM station will be constructed under the auspices of the new organization. We feel that the public interest will be better served by allowing a new organization an additional year⁷ to build a failing station than to have the permit lapse under the previous organization and no local service is provided to the community. REC opposes anyone's attempt to make a "business" out of LPFM. Therefore, we can't support any organization's attempt to make a profit through the sale of their LPFM construction permit.

10. Voluntary Transfer of Control of LPFM Licenses. REC feels that there should be a "way out" for an organization with an established LPFM station to transfer the station to another qualified entity. REC supports the voluntary transfer of control of LPFM licenses (and permits of built stations) to other organizations that specifically meet the NCE qualifications for an LPFM station. This means that the incoming organization must not have any attributable interest in any other broadcast station (full power, low power or translator). If the incoming organization has an attributable interest in another LPFM station, the transfer of control would be conditioned on the cancellation of the other station license/permit or the successful transfer of control of the license/permit to another qualified organization. REC opposes the sale of the license or permit. Any consideration made in such a transfer must be for real property at fair market value and any documented assumption of debt and not specifically for the station license or permit itself.

⁶ - Any application to assign a construction permit must include a certification that there was no monetary consideration in the assignment of the permit.

⁷ - The construction period would never exceed 4 years unless a reason which normally qualifies for tolling (such as a natural disaster) warrants the construction permit to be extended longer.

II. OWNERSHIP AND ELIGIBILITY LIMITATIONS

a. Discussion

11. Current rules⁸ allow after a period of time, the eventual ownership of up to 10 LPFM stations, prohibit multiple ownership of LPFM stations in generally the same area and restrict the first LPFM stations to local ownership. The Commission is now considering whether the multiple ownership and local ownership rules should be extended or made permanent⁹. REC feels that the conduct of certain applicants in the 2003 "Great Translator Invasion" window¹⁰ shows what could happen if the ownership limitations on LPFM are relaxed. We do not want to see a situation in LPFM where we are performing "damage control" like we currently are with the FM Translator service¹¹.

12. While ownership rules are on the table, we must also take into consideration issues raised by some LPFM operators to REC. These include the inability to provide sufficient service to their community on 100 watts at 30 meters height above average terrain ("HAAT"). Some in the LPFM community are recommending that the Commission develop a 250-watt LPFM service. REC feels that a proposal for a 250-watt service would be out of scope of this specific proceeding at this time¹². REC is aware that there are a small number of LPFM stations that are being relayed by FM Translators. These translators are licensed to individuals or organizations other than the LPFM station or anyone who has an attributable interest in the LPFM station. This is due to the existing cross-ownership rules¹³. REC feels that LPFM licensees should be permitted to operate a very small number of additional

⁸ - §73.855

⁹ - NPRM at 23.

¹⁰ - See *FM Translator Auction Filing Window and Application Freeze*, Report No. AUC-03-83-A (Auction #83), DA 03-359, released February 6, 2003.

¹¹ - Recognizing that there are issues with the "Great Translator Invasion", the FCC has imposed a 6-month freeze on the granting of translator construction permits. See NPRM at 33.

¹² - Other proposals supported by REC include a low power AM (LPAM) broadcast service as well as the expansion of the FM broadcast band to encompass the spectrum between 82-88 MHz, which is also TV Channel 6. REC does not feel that these proposals would be in scope for this specific proceeding.

¹³ - §73.860(a) prohibits the cross-ownership of an LPFM station and a FM Translator.

facilities that will provide in "fill-in" service or provide service to portions of the community that are otherwise underserved by the main signal due to geography. At the same time, we are concerned about LPFM stations being retransmitted over translators, especially when the FM Translator can have a much superior facility than the LPFM. In this case, the LPFM would serve as a "seed" and the primary listening would be on the translator.

b. REC Proposals

13. Ownership Limitations. REC supports maintaining the existing ownership limits of one LPFM station per organization. We do feel however, LPFM stations can hold an attributable interest in a small number (no more than 2) low power facilities that are intended to extend the same LPFM station into areas that are currently underserved by the primary signal. We feel that these facilities should meet the following criteria:

(1) The proposed facility's service contour must an overlap of the main facility but may not exceed a 30% overlap. (This assures that the additional facility would be used as an extension of the primary LPFM station to provide complete coverage to a community)

(2) The additional facility must act as a translator to the primary LPFM station at all times and may not originate it's own programming¹⁴.

(3) The additional facility must operate with equal or inferior facilities than the primary LPFM station¹⁵.

(4) For rulemaking purposes, this additional facility is considered an FM Translator. This facility can use contour overlap methodology¹⁶ and would not be subject to the Radio Broadcast Protection Act.

(5) Unlike other translators, these additional facilities are protected at the same level as LPFM stations¹⁷.

¹⁴ - To promote spectrum efficiency, the additional facility could operate on the same channel as a booster station. Unlike the normal booster rules, these LPFM boosters would not be required to keep their entire 60 dBu service contour within the primary station's service contour.

¹⁵ - For example if a 60 dBu contour of 5.6km or less if the primary station in an LP-100.

¹⁶ - As well as directional antennas.

14. LPFM Stations Being Carried Over Translators. REC feels that LPFM stations can be carried over non-commonly owned translators under the following conditions:

(1) There is less than a 20% overlap between the service contour of the primary LPFM station and the translator.

(2) The translator can not have a 60 dBu service contour that exceeds 5.6km.

(3) Like other translators, these facilities are subject to displacement by future LPFM stations.

REC is aware that there are translator applications proposing to carry LPFM stations with 60 dBu contours that exceed 5.6km or have more than a 20% overlap in service contour. Some of these applications have been granted and some have already constructed. We ask that these specific facilities be grandfathered with their larger service areas.

III. TIME SHARING

a. Discussion

15. REC is concerned about the period of time allocated for reaching time share agreements. We agree with the other pro-LPFM organizations that 30 days is not enough time. After the LPFM filing windows, some LPFM applicants have reported to REC that they had difficulty reaching the other applicants that they were mutually exclusive with. After the first LPFM windows, REC developed a system called MAX¹⁸. The system was intended to permit LPFM applicants in the same MX group to be able to meet in a common place and negotiate time sharing or attempt to reach a universal settlement through channel changes. One of the major problems that we experienced with MAX was that in order to maintain the integrity of the system, we require an e-mail to be sent to the one shown on the application for the original construction permit. We had found that over the past couple of years since the LPFM application was originally filed, that the e-mail address on the application was no longer valid therefore the applicant was not able to participate in MAX. We had also found through filing Informal Objections and Petitions to Deny that some mailing addresses on applications were

¹⁷ - Meaning that they are protected from displacement by other LPFM stations.

¹⁸ - Mutual Application Exchange (MAX)

incorrect. Because of these and other similar situations, we feel that the additional time needed to try to reach the other applicants to negotiate time sharing or other settlements is warranted¹⁹.

16. Unfortunately, one of the major drawbacks of the successive license term methodology developed by the Commission as a last resort for LPFM applicants is that in some cases, a station is required to construct within 18 months (3 years after the time limit on CPs is extended) but then the station may have to remain in mothballs until the 7th year into an 8 year term. We are afraid that in some situations that applicants who have been granted CPs under this scheme will not construct or there may be issues that would require the organization to change their location over that 7-year period. We feel that a process where if an organization withdraws from the existing group, the remaining licensees would have additional months to broadcast absorbing the time vacated by the abandoning organization. We feel that at any time during the license term if the remaining licensees within the group come up with a universal settlement to engage in a conventional time-share arrangement (where each proponent broadcasts at least 10 hours per week), that the Commission should grant such an arrangement and remove the non-renewable condition of the permit and/or license.

17. However, REC is aware that some organizations, especially those with significant political differences will never be able to reach such an agreement. In these cases, the successive license terms would be the only way to assure that each group has a turn at the microphone. REC feels that at the end of the 8-year term, all licensees in the group should file a renewal. Only those renewals that are granted will have successive licenses divided accordingly in the next 8-year cycle. If stations universally agree to conventional time-sharing, each licensee will be renewed for an 8-year license with the time-share conditions. If at the end of the 8-year cycle, only one renewal is granted in the group, that organization will receive a full 8 year license.

¹⁹ - We also need to remind applicants that they need to make sure their contact information on their application is current.

18. The Commission may want to look at situations where a new organization may wish to broadcast on a time-share basis. This could be one of three different situations:

(1) The incumbent full time LPFM station on a particular channel reaches a universal settlement with the new applicant to permit a time-share agreement on the existing channel.

(2) All members of an existing conventional time-share group agree to add the additional station to the group.

(3) There are times of the day when no station in the current time-share group is broadcasting and the new station wishes to broadcast during any or all of that currently unused time²⁰.

b. REC Proposals

19. Handling organizations that pull out of a successive license arrangement.
REC feels that when a station pulls out of the arrangement, the remaining months of the 8-year cycle are then equally distributed among the other licensees.

Example #1 - Group of 4 stations, each station has been granted a 2-year successive license. Station "A" has already constructed and covered their CP and they are on the air. It is now month #3 into their 2-year license:

Month...

0-24	25-48	49-72	73-96
A	B	C	D

Now say that Station "C" pulls out of the group, the station "A" and the other licensees are extended to 32 month licenses.

0-32	33-64	65-96
A	B	D

Example #2 - Same situation as above, except two years has passed and station B is on the air. Since Station "A's" license has expired, the remaining licensees will be permitted to broadcast for 36 months to fill in the 8-year cycle.

0-24	25-60	61-96
A	B	D

²⁰ - REC is currently aware of one location where this situation currently exists. In Visalia, CA, KFSC-LP (Facility ID 124319) broadcasts from 5AM-9AM Monday through Saturday and KQOF-LP (Facility ID 124745) broadcasts from 5PM-9PM Monday through Saturday. No station broadcasts outside of those times including all day on Sunday.

REC Networks - MM Docket 99-25

For both examples, when the next 8-year cycle comes up and if all three stations are granted renewals, they will be granted 32 month licenses to cover the next 8-year cycle:

0-32	33-64	65-96
A	B	D

20. New entrants agreeing to time share with incumbents. REC feels that during filing windows for new stations, that if a particular new applicant can reach a universal settlement with the exiting station(s) on a particular frequency, that station can be licensed under a time share agreement.

21. New entrants proposing part-time operation during hours not being used by any other LPFM station. REC feels that once a window is opened, new entrants may apply to use the period of time on a particular channel that is currently not being used by any other station. Competing applications filed in this window would be treated like other MX applications but only for the time periods not being used by other LPFM broadcasters.

IV. CONSTRUCTION PERIOD

a. Discussion

22. The Commission has proposed to extend the construction deadline to 36 months (3 years), which is consistent with other broadcast services. As mentioned previously, many LPFM operators have reported to REC many difficulties in being able to locate a site and construct their station within the 18-month period.

b. REC Proposals

23. Extension of the Construction Period. REC supports the extension of the Construction Permit period from 18 to 36 months for all newly granted LPFM permits.

24. Automatic Extension of Existing Construction Permits. REC feels that the public interest would be served by allowing an automatic extension of all existing valid construction permits by another 18 months to make them 36 month permits. Such an automatic extension would require less Commission resources and would not cause a substantial undue burden on the future availability of channels. This would also allow the Commission to easily implement our proposed assignment rules for LPFM permits on the verge of lapsing. The public

interest would be better served by allowing this insurance that more stations will be able to construct and serve their communities.

V. INTERFERENCE PROTECTION METHODOLOGY

a. Discussion

25. As the leading independent provider of database information to the LPFM community, we have to agree with the Commission that from a simplicity standpoint, distance spacing is the best way to determine the spacing between LPFM and other broadcast stations. Using this methodology requires significantly less resources and less expense. We do however understand that there are groups that may be able to obtain the resources of a qualified consulting engineer. At this time, we are required by statute to use distance spacing methodology however at a future time, we may be able to consider opportunities for LPFM applicants to use prohibited overlap models, but not at this time.

26. Even though LPFM is required to use distance spacing methodology for determining interference, there are still a couple of things that can be done to increase the availability of LPFM stations while remaining within the provisions of the RBPA.

27. Currently, the Commission is required by statute to use distance spacing methodology for first, second and third adjacent channel. The statute does not specify any requirements that an LPFM station is required to protect a full power or FM translator station on it's intermediate frequencies (IF). The IF channels are those channels that are 53 and 54 channels added or reduced (+/- 10.6 and 10.8 MHz) from the subject channel. Current rules in the FM Translator service do not require translators to protect a full power station's IF channels if the translator is operating less than 100 watts ERP²¹. With these rules in place, the Commission has acknowledged that any interference caused by a translator to a full power station's IF channel is insignificant when the translator is operating such low powers. We feel that the LPFM service should also be able to enjoy such an exception.

²¹ - §74.1204(g)

28. For "legacy" FM Translators that REC feel are still eligible for protection from LPFM stations, current rules specify distance separation based on the distance to the service contour. There are currently three (3) different classifications of protections for translators based on the size of the service area. We feel that in some cases, these three classifications overprotect translators, which precludes the potential for new LPFM stations. We feel that we can expand the number of categories, which better represents the actual service area of the translator and stay in compliance with the RBPA.

29. In many areas, LPFM access to channels in the reserved band²² are precluded by Low Power TV ("LPTV"), Class A and TV translator stations operating (collectively "LPTV stations") on Channel 6. When the Commission added protection to LPTV stations by LPFM, the rules assumed that all LPTV stations operated at full facilities²³. In research performed by REC for MB Docket 04-233, we have determined that only 5 Channel 6 LPTV stations had service contours of over 80 km. In fact, a majority of LPTV stations on Channel 6 have service contours of less than 30 km. This means that LPFM stations are overprotecting a majority of LPTV Channel 6 stations by at least 50 km. The RBPA does not specifically address the protection of Channel 6 full power or low power TV stations. REC feels that between the "legacy" FM translator rules that we are proposing as well as our proposed criteria for LPTV Channel 6 stations, there will be an increased opportunity for LPFM in the reserved band.

b. REC Proposals

30. Intermediate Frequency (IF) Protection. REC proposes to eliminate all Intermediate Frequency (IF) protections to domestic full power and FM translator stations. REC is unsure if the IF protections would still be required between LPFM stations and foreign stations based on the international agreements with Canada and Mexico.

²² - Channels 201 through 220 (88.1 to 91.9 MHz).

²³ - See "Creation of a Low Power Radio Service", *Memorandum Opinion and Order on Reconsideration*, MM Docket 99-25, FCC 00-349, released September 28, 2000 at 42. Also see Footnote 47 in that same document which assume that LPTV stations operate at 3kW ERP at 610 meters HAAT.

REC Networks - MM Docket 99-25

31. Protections to "Legacy" FM Translators. For translators that are eligible for grandfathering per REC's proposed criteria elsewhere in this filing, we propose to extend the number of "sub-classes" of translators from 3 to 8 to better represent the protected service area of the translator. Currently, all translators are classified in one of the three following subclasses:

Service Contour of 7.3 km or less.
Service Contour of greater than 7.3 km but less than 13.3 km.
Service Contour of 13.3 km or greater.

REC proposes to increase the number of subclasses to eight (8). Each subclass will have the following definition:

Service Contour of 5.3 km or less.
Service Contour of greater than 5.3 km but less than or equal to 7.3 km.
Service Contour of greater than 7.3 km but less than or equal to 9.3 km.
Service Contour of greater than 9.3 km but less than or equal to 11.3 km.
Service Contour of greater than 11.3 km but less than or equal to 13.3 km.
Service Contour of greater than 13.3 km but less than or equal to 15.3 km.
Service Contour of greater than 15.3 km but less than or equal to 17.3 km.
Service Contour of greater than 17.3 km.

32. Protection to LPTV, Class A and TV Translators on Channel 6. REC proposes to change the separation requirement between Channel 6 LPTV, Class A and TV Translators to allow for a more accurate representation of the service contour of the Channel 6 station using the following methodology:

LPFM Interference Contour based on channel (rounded to the nearest km):	plus Channel 6 LPTV, TV Translator and Class A Grade-B contour:
LP-100 Channel 201 - 8 km Channel 202 - 7 km Channel 203 - 6 km Channels 204 & 205 - 5 km Channels 206 through 212 - 3 km Channels 213 through 217 - 2 km Channels 218 through 220 - 1 km	The maximum 47 dBu (F 50,50) contour assuming non-directional facilities measured to the farthest lobe. Distance rounded to the nearest kilometer.
LP-10 Channel 201 - 5 km Channel 202 - 4 km Channels 203 through 205 - 3 km Channel 206 - 2 km Channels 207 through 220 - 1 km	
<i>For example: For a LP-100 station on Channel 205, if there is a Channel 6 LPTV, TV Translator or Class A station with a maximum Grade B contour of 26km, then the LP-100 station must be spaced at least 31 km. (LPFM: 5 + LPTV: 26 = 31 km)</i>	

REC does not propose any changes to the protection of full power Channel 6 stations. All full power Channel 6 stations will be protected assuming full facilities as they are today.

VI. THE STATUS OF FM TRANSLATORS TO LPFM STATIONS

a. Discussion

33. The FM Translator service was originally intended to provide FM services into areas that are underserved by full power FM stations by allowing an FM station to be rebroadcast in the remote area over the translator by receiving the primary station or a relay of the primary station via another translator. Over the years, the FCC started to permit commonly owned non-commercial educational stations to feed their translators by satellite. Although this rule was well intended to allow public radio networks to expand services into rural areas, the rule was exploited by a small number of upstart organizations that used this rule to build a network of translators throughout the country. One organization has over 700 such translators located in both underserved as well as very well served metropolitan areas.

34. REC feels that while certain translators continue to provided a needed service especially in our underserved rural areas of the west, we feel that distant translators, most of them satellite-fed are not able to provide any kind of a local or regional service, especially in the event of an emergency. REC feels that a local LPFM station should have spectrum priority over such a distant translator.

35. REC defines a distant translator as one where the ultimate primary station that is relayed is located in a different state and is at least 400 km from the translator.

36. REC recognizes that certain FM Translators carry a primary station that is able to provide a local or regional service to its listeners. Some of these "legacy" translators have existed for decades and to subject these translators to displacement would cause more harm and therefore would be contrary to the public interest.

37. REC feels that these "legacy" translators should be grandfathered and protected by LPFM stations. In order to meet the "legacy" status a translator must meet ALL of the following criteria:

(1) The original construction permit must have been filed prior to March 9, 2003.

(2) The facilities have been granted. (They need not be constructed yet.)

(3) As of March 17, 2005, the ultimate primary station for the translator must be either in the same state or be in a different state but within 400 km of the translator.

If a translator changes their primary station to a distant primary station would lose their "legacy" grandfathered status and they are not able to get it back by changing to a local primary station. Translators with a distant primary station on March 17, 2005 would not be permitted to obtain "legacy" status by changing to a different primary station. REC has identified 2,999 facilities that would qualify for this "legacy" status. These translators are the backbone of the FM Translator service.

38. We have specifically excluded the translators that were applied for during the "Great Translator Invasion" 2003 filing window. These translators have either not constructed or they have been constructed but they have no ongoing history of service to the area they were intended to serve. We also question the intentions of several entities that filed during this window as to their intended use of the translator's construction permit. REC does not endorse the automatic dismissal of these applications however applicants should be advised of their new "sub-secondary" status.

39. "Legacy" translators would be protected using the proposed distance separation shown in paragraph 31 in this filing.

40. REC proposes no changes to how FM Boosters are protected²⁴.

²⁴ - REC's understanding of the rules considers a FM Booster as a "Class D" station and subject to the protections afforded to Class D stations.

b. REC proposals

41. Define a "distant translator". We are asking that the Commission define a "Distant Translator" as a FM Translator where the ultimate primary station²⁵ is in a different state and is at least 400 km from the FM Translator.

42. Define a "legacy translator". A "Legacy Translator" is a facility that had its application for a original construction permit filed prior to March 9, 2003 (prior to the "Great Translator Invasion" window) and that application has been granted and that as of March 17, 2005, the ultimate primary station of the translator was in the same state or in a different state but within 400 km of the translator.

43. LPFM Protections to FM Translators. Revise the rules that LPFM stations are only required to protect FM Translators that have been grandfathered as "legacy" translators following the guidelines shown in this filing.

44. Reclassify all other translators. Reclassify all translators not eligible for "legacy" status as sub-secondary to LPFM stations. LPFM applicants are not required to protect these sub-secondary stations but should make every effort to find a channel that would allow both the LPFM station and the non-protected FM Translator to co-exist whenever possible.

45. Second adjacent channel protection of LPFM by Translators. REC is asking that the Commission consider applying a second adjacent channel protection to subsequently authorized translators to put LPFM on a closer playing field to translators²⁶.

²⁵ - "Ultimate primary station" takes into consideration the relationship between the translator and the full power FM station that the translator rebroadcasts. It does not take into consideration the location of any intermediate translator that may feed the translator. For example: W201ZZ is a translator that rebroadcasts the signal of WNCE, a station in a different state and 850 km away. However, W201ZZ receives does not directly receive WNCE via satellite, instead it receives the signal of W218YY, a satellite fed translator commonly-owned with WNCE. W218YY is located in the same state as W201ZZ. However since W201ZZ is rebroadcasting WNCE and the distance between WNCE and W201ZZ is over 400km and in a different state, W201ZZ is still considered a "Distant Translator" even though W201ZZ receives WNCE's program from W218YY, another nearby translator.

²⁶ - Even prior to the RBPA, translators were never required to protect LPFM second adjacent channels but LPFM stations were required to protect translator second adjacent.

VII. PROTECTION OF SUBSEQUENTLY AUTHORIZED FM FACILITIES

a. Discussion

46. In the NPRM, the Commission asks if an amendment of §73.809 would be consistent with Congress' directive barring third adjacent channel separations for low power FM radio stations. Looking at the latest version of §73.809 in the October, 2004 version of the Code of Federal Regulations, we see absolutely no reference to third adjacent channel protections. Therefore an amendment to §73.809 would only impact second-adjacent channels and therefore would still be permitted under the RBPA.

b. REC Proposal

47. Application of §73.809. REC proposes that §73.809 be amended to eliminate second-adjacent and IF channels as being subject to the interference criteria in this section.

VII. STATUS OF THE LP-10 SERVICE

a. Discussion

48. In the original rulemaking, the Commission has placed LP-10 stations in a "sub-secondary" status where these stations can be displaced by translators and LP-100 stations. In many urban areas especially if the RBPA is ever repealed and the Commission accepts our proposal to only protect "legacy" translators, LP-10 stations will be the only service available. We need to assure that LP-10 applicants that they will have some form of protection from other secondary services. Even though an LP-10 station has a smaller service area than most translators, the public interest would dictate the local LP-10 station to have spectrum priority over a higher powered translator station. We also feel that these smaller LP-10 stations be protected from higher powered LP-100 stations. Nothing in our proposal should prevent an LP-10 from being able to upgrade to LP-100 in a subsequent filing window.

b. REC Proposal

49. Redefinition of the Status of LP-10 Stations. REC is asking that LP-100 and all translators be required to protect LP-10 stations as they protect LP-100 stations.

IX. CONCLUSION

50. REC appreciates the Commission taking the time to help us improve the Low Power FM broadcast service. LPFM has given local communities a voice that they have lost or that they never had in the first place. If the Commission amends the rules as requested by REC, it will open up many new opportunities in rural and suburban areas. These changes in the rules coupled with the eventually hopeful repeal of the Radio Broadcast Protection Act will open up new opportunities in many urban areas. We do feel however, that this NPRM will not fix all of the issues with LPFM and a community's access to the airwaves. Additional work still needs to be done. This NPRM is a step in the right direction.

Respectfully Submitted,

Rich Eyre for
REC Networks
P O Box 40816
Mesa, AZ 85274-0816
rec@recnet.com
<http://www.recnet.com>

APPENDIX A
TEXT OF REC PROPOSED CHANGES TO THE RULES

§73.807 Minimum distance separation between stations

(a) (1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, timely-filed applications for new and existing FM stations, authorized LPFM stations, LPFM station applications that were timely-filed within a previous window, and vacant FM allotments. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station Class Protected by LP100	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	Third-adjacent Channel Minimum Separation (km)	I.F . Channel minimum separations
	No Interference Required Received	For	No Interference Required Received	For	Required	Required	10.6 or 10.8 MHz
<u>LP10</u>	<u>16</u>	<u>22</u>	<u>10</u>	<u>11</u>	<u>None</u>	<u>None</u>	<u>None</u>
LP100	24	24	14	14	None	None	None
D	24	24	13	13	6	6	<u>None</u>
A	67	92	56	56	29	29	<u>None</u>
B1	87	119	74	74	46	46	<u>None</u>
B	112	143	97	97	67	67	<u>None</u>
C3	78	119	67	67	40	40	<u>None</u>
C2	91	143	80	84	53	53	<u>None</u>
C1	111	178	100	111	73	73	<u>None</u>
C0	122	193	111	130	84	84	<u>None</u>
C	130	203	120	142	93	93	<u>None</u>

REC Networks - MM Docket 99-25

(b)(1) An LP10 station will not be authorized unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP10 stations, vacant FM allotments, or LPFM stations.

Station Class Protected by LP10	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	Third-adjacent Channel Minimum Separation (km)	I.F . Channel minimum separations
	No Interference Required Received	For	No Interference Required Received	For	Required	Required	10.6 or 10.8 MHz
LP10	13	13	8	8	None	None	None
LP100	16	22	10	11	None	None	None
D	16	21	10	11	6	6	<u>None</u>
A	59	90	53	53	29	29	<u>None</u>
B1	77	117	70	70	45	45	<u>None</u>
B	99	141	91	91	66	66	<u>None</u>
C3	69	117	64	64	39	39	<u>None</u>
C2	82	141	77	81	52	52	<u>None</u>
C1	103	175	97	108	73	73	<u>None</u>
CO	114	190	99	127	84	84	<u>None</u>
C	122	201	116	140	92	92	<u>None</u>

(d) In addition to meeting the separations in subsections (a) through (c) above, LPFM applications must meet the minimum separation requirements in the following tables with respect to FM Translators that meet all of the following requirements:

- (1) The original construction permit for was applied for prior to March 9, 2003; and
- (2) The original construction permit application was granted; and
- (3) As of March 17, 2005, has an ultimate primary station that is within the same state or in a different state but within 400 km; and
- (4) On or after March 17, 2005, no application has been filed to change the primary station to a facility that is located in a different state and at least 400 km from the FM translator.

REC Networks - MM Docket 99-25

(1) LP100 stations:

Distance to FM Translator 60 dBu Contour	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second& Third-adjacent Channel Minimum Separation (km)	I.F . Channel Minimum Separation (km)
	For No Interference Required	No Received	For No Interference Required	No Received	Required	10.6 or 10.8 MHz
<u>17.3 km or greater</u>	<u>39</u>	<u>67</u>	<u>28</u>	<u>35</u>	<u>21</u>	<u>None</u>
<u>greater than 15.3 km, but less than 17.3 km</u>	<u>36</u>	<u>59</u>	<u>25</u>	<u>32</u>	<u>18</u>	<u>None</u>
<u>greater than 13.3 km, but less than 15.3 km</u>	<u>34</u>	<u>55</u>	<u>23</u>	<u>28</u>	<u>16</u>	<u>None</u>
<u>greater than 11.3 km, but less than 13.3 km</u>	<u>32</u>	<u>51</u>	<u>21</u>	<u>26</u>	<u>14</u>	<u>None</u>
<u>greater than 9.3 km, but less than 11.3 km</u>	<u>30</u>	<u>44</u>	<u>19</u>	<u>21</u>	<u>12</u>	<u>None</u>
<u>greater than 7.3 km, but less than 9.3 km</u>	<u>28</u>	<u>36</u>	<u>17</u>	<u>19</u>	<u>10</u>	<u>None</u>
<u>Greater than 5.3 km, but less than 7.3 km</u>	<u>26</u>	<u>30</u>	<u>15</u>	<u>16</u>	<u>8</u>	<u>None</u>
<u>Less than 5.3 km</u>	<u>24</u>	<u>24</u>	<u>13</u>	<u>13</u>	<u>6</u>	<u>None</u>

REC Networks - MM Docket 99-25

(2) LP10 stations:

Distance to FM Translator 60 dBu Contour	Co-channel Minimum Separation (km) For No Interference Required Received		First-adjacent Channel Minimum Separation (km) For No Interference Required Received		Second& Third-adjacent Channel Minimum Separation (km) Required	I.F . Channel Minimum Separation (km) 10.6 or 10.8 MHz
<u>17.3 km or greater</u>	<u>30</u>	<u>65</u>	<u>25</u>	<u>33</u>	<u>20</u>	<u>None</u>
<u>greater than 15.3 km, but less than 17.3 km</u>	<u>28</u>	<u>58</u>	<u>22</u>	<u>29</u>	<u>18</u>	<u>None</u>
<u>greater than 13.3 km, but less than 15.3 km</u>	<u>26</u>	<u>53</u>	<u>20</u>	<u>26</u>	<u>16</u>	<u>None</u>
<u>greater than 11.3 km, but less than 13.3 km</u>	<u>24</u>	<u>49</u>	<u>18</u>	<u>23</u>	<u>14</u>	<u>None</u>
<u>greater than 9.3 km, but less than 11.3 km</u>	<u>22</u>	<u>42</u>	<u>16</u>	<u>20</u>	<u>12</u>	<u>None</u>
<u>greater than 7.3 km, but less than 9.3 km</u>	<u>20</u>	<u>34</u>	<u>14</u>	<u>17</u>	<u>10</u>	<u>None</u>
<u>Greater than 5.3 km, but less than 7.3 km</u>	<u>18</u>	<u>28</u>	<u>12</u>	<u>14</u>	<u>8</u>	<u>None</u>
<u>Less than 5.3 km</u>	<u>16</u>	<u>21</u>	<u>10</u>	<u>11</u>	<u>6</u>	<u>None</u>

Sec. 73.809 Interference protection to full service FM stations.

(a) It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, ~~or first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels~~ as the LPFM station, where interference is predicted to occur and actually occurs within:

- (1) The 3.16 mV/m (70 dBu) contour of such stations;
- (2) The community of license of a commercial FM station; or
- (3) Any area of the community of license of an NCE FM station that is predicted to receive at least a 1 mV/m (60 dBu) signal. Predicted interference shall be calculated in accordance with the ratios set forth in Sec. 73.215(a)(1) and 73.215(a)(2). ~~Intermediate Frequency (IF) channel interference overlap will be determined based upon overlap of the 91 dBu F(50,50) contours of the FM and LPFM stations.~~ Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as described in paragraph (a) of this section is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to paragraphs (a) and (b) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

(d) It shall be the responsibility of the licensee of an LPFM station to correct any condition of interference that results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(e) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, DC, after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

§73.825 Protection to Reception of TV Channel 6

(b) (1) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances are met with respect to all low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.

(2) Minimum separation is determined by adding the maximum 47 dBu F(50, 50) contour based on effective ERP and maximum HAAT assuming non-directional facilities measured to the farthest lobe, rounded to the nearest kilometer and then adding the following value to represent the LPFM facility:

<u>Channel</u>	<u>LP100 (km)</u>	<u>LP10 (km)</u>
<u>201</u>	<u>8</u>	<u>5</u>
<u>202</u>	<u>7</u>	<u>4</u>
<u>203</u>	<u>6</u>	<u>3</u>
<u>204</u>	<u>5</u>	<u>3</u>
<u>205</u>	<u>5</u>	<u>3</u>
<u>206</u>	<u>3</u>	<u>2</u>
<u>207</u>	<u>3</u>	<u>1</u>
<u>208</u>	<u>3</u>	<u>1</u>
<u>209</u>	<u>3</u>	<u>1</u>
<u>210</u>	<u>3</u>	<u>1</u>
<u>211</u>	<u>3</u>	<u>1</u>
<u>212</u>	<u>3</u>	<u>1</u>
<u>213</u>	<u>2</u>	<u>1</u>
<u>214</u>	<u>2</u>	<u>1</u>
<u>215</u>	<u>2</u>	<u>1</u>
<u>216</u>	<u>2</u>	<u>1</u>
<u>217</u>	<u>2</u>	<u>1</u>
<u>218</u>	<u>1</u>	<u>1</u>
<u>219</u>	<u>1</u>	<u>1</u>
<u>220</u>	<u>1</u>	<u>1</u>

(3) For example, for an LP100 station on Channel 205 to protect a LPTV, TV Translator or Class-A station operating on channel 6 and that station has a maximum 47 dBu contour of 26km, then the minimum distance required is 31 km.

§73.855 Ownership limits.

(a) No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two LPFM stations separated by less than 12 km (7 miles) except as authorized in paragraph (b).

—(b) Except as provided in paragraph (b)(4) of this section, ~~nationwide ownership limits will be phased in according to the following schedule:~~

—(1) ~~For a period of two years from the date that the LPFM stations are first made available for application, a party may hold an attributable interest in no more than one LPFM station.~~

—(2) ~~For the period between two and three years from the date that the initial filing window opens for LPFM applications, a party may hold an attributable interest in no more than five LPFM stations.~~

—(3) ~~After three years from the date that the initial filing window opens for LPFM stations, a party may hold an attributable interest in no more than ten stations.~~

(b) Not-for-profit organizations and governmental entities with a public safety purpose may be granted multiple licenses only if:

(i) One of the multiple applications is submitted as a priority application, and;

(ii) The remaining non-priority applications do not face a mutually exclusive challenge.

(c) In no case shall two commonly-owned LPFM stations be separated by less than 12 km (7 miles).

73.860 Cross-ownership.

(a) Except as provided in paragraphs (b) and (c) of this section, no license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions.

(b) A party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest unless such party is a college or university that can certify that the existing broadcast radio station is not student run. This exception applies only to parties that;

- (1) Are accredited educational institutions, and;
- (2) Own attributable interest in non-student run broadcast stations;
- (3) Apply for an authorization for an LPFM station that will be managed and operated on a day-to-day basis by students of the accredited educational institution; and
- (4) Do not face competing applications for the LPFM authorization.

(c) A party holding an attributable interest in an LPFM station may also attributable interest in up to three (3) FM translator stations if the following are met:

(1) The FM translator must specify the LPFM station as it's primary station and must be able to receive the primary station over the air or via another commonly owned FM translator.

(2) If the primary LPFM station is LP100, the maximum FM translator facilities will be 100 watts at 30 meters HAAT.

(3) If the primary LPFM station is LP10, the maximum FM translator facilities will be 10 watts at 30 meters HAAT.

(4) In no case shall a commonly owned FM translator be located more than 12 km from the primary LPFM station.

(5) In no case shall the population within the area where the service contours of the LPFM station and the commonly owned FM translator overlap represent over 30 percent of the total population within the service contours of the LPFM station the commonly owned FM translator combined.

(d) No LPFM licensee may enter into an operating agreement of any type, including a time brokerage or management agreement, with either a full power broadcast station or another LPFM station.

73.872 Selection procedure for mutually exclusive LPFM applications.

* * * *

(d) Successive license terms. (1) If a tie among mutually exclusive applications is not resolved through time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive, ~~non~~-renewable license terms of no less than one year each for a total combined term of eight years, in accordance with Sec. 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 90 days of written notification by the Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an

agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

(2) Groups of more than eight tied, grantable applications will not be eligible for successive license terms under this section. Where such groups exist, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as provided in paragraph (b)(1) of this section. If more than eight tied, grantable applications remain, the applicants must submit, within 90 days of written notification by the Commission staff, a written settlement agreement limiting the group to eight. Failure to do so will result in dismissal of the entire application group.

(3) In the event that the permit or license of one of the group members is dismissed, revoked or cancelled, the months allocated to that group would then be spread evenly among the remaining group members whose license periods have not already expired.

(4) At any time, all members of the group may universally agree to a time share agreement. Upon Commission approval, licenses including for groups whose successive licenses have already ended will be modified to allow for time share operation.

(e) Mutually exclusive applicants may propose a settlement at any time during the selection process after the release of a public notice announcing the mutually exclusive groups. Settlement proposals must include all of the applicants in a group and must comply with the Commission's rules and policies regarding settlements, including the requirements of Sec. 73.3525, 73.3588, and 73.3589. Settlement proposals may include time-share agreements that comply with the requirements of paragraph (c) of this section, provided that such agreements may not be filed for the purpose of point aggregation outside of the ninety-day period set forth in paragraph (c) of this section.

(f) New applicant access to unused blocks of time. (1) New applicants may request to broadcast during time periods that are not being used by existing members of the group as long as the new applicant proposes to broadcast at least 10 hours per week and there is no proposed time overlap with existing authorized operations.

(2) If such an application is received, the Commission shall serve the existing members of the group a notice to show cause on why their license shall not be modified to specify time share operation with the new entrant(s).

(3) A universal settlement between the existing group members and the new entrants may be reached at any time.

(g) Upon reaching universal settlement with existing stations in a time share group, a new applicant may be added the group. Such a settlement may only be made during filing windows that permit applications for new stations.

§ 73.879 Signal retransmission.

(a) An LPFM licensee may not retransmit, either terrestrially or via satellite, the signal of a full-power radio or the aural signal of a television broadcast station except as allowed in paragraph (b).

(b) The retransmission of the aural signal of a radio or television broadcast station is limited to emergency information pertaining to the immediate preservation of life or property. Such retransmission shall be done in a non-commercial manner and shall be limited to the duration of the immediate emergency.